S.B. Civil Misc. Appeal No.10/2007
(Girdharilal & anr. Vs.Jagdish Singh & ors.)

Date of Order :: 5th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. R.K.Singhal, for the appellants.

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By way of this appeal, the claimants seek enhancement over the amount of compensation awarded by the Tribunal on account of accidental death of their son Ramesh Kumar, about 24 years in age.

For quantification of compensation, the claimants alleged that deceased was earning about Rs.6,000/- per month by way of agriculture and dealing in vegetables and flowers. Girdharilal father of the deceased, stated that he had taken agriculture land of his neighbour Jeewan Jyot Singh on contract. The said neighbour Jeewan Jyot Singh appeared in evidence as AW-4 and stated to have given one-half portion of his land at Murraba No.17 for cultivation to Girdharilal and Ramesh Kumar. Another witness, AW-3 Jot Ram, a broker of Raisinghnagar Sabji Mandi deposed that the deceased Ramesh used to sell vegetables through him and while producing some particulars of the accounts suggested that the deceased sold vegetables worth Rs.1,03,143.48 in the year 2001, worth Rs.1,10,381.57 in the year 2002 and worth Rs.64,200.14 from January 2003 to 10.07.2003.

The Tribunal has disbelieved the assertion on the part of the witness Jeewan Jyot Singh for his not producing any documentary evidence about his land and so also about the contract with Girdharilal. So-called accounts of the vegetable vending produced by Jot Ram have not been believed for being not of regularly maintained accounts-books. The Tribunal has, therefore, proceeded to put an estimate on the income of the deceased and with reference to the admission of the claimant Girdharilal of the agriculture land having taken on contract by them i.e., father and son jointly, observed that at the most the victim was assisting his father in agriculture work and has estimated their joint income at Rs.4,000/- per month and therein, the share of the deceased at Rs.1,500/- per month.

Having estimated the income of the deceased at Rs.1,500/- per month, the Tribunal has referred to the age of the parents of the deceased at 58-53 years and has found it appropriate to apply a multiplier of 8. Then, the Tribunal has proceeded to assess pecuniary loss at Rs.1,44,000/- by taking entire of estimated income of the deceased at Rs.1,500/- per month towards loss of contribution for the claimants. The Tribunal has further allowed Rs.25,000/- to the claimants towards non-pecuniary loss and yet another Rs.5,000/- towards other expenses. In this manner, the

Tribunal has allowed compensation to the claimants at Rs.1,74,000/- and has also allowed interest at the rate of 9% per annum after adjustment of the amount received under interim award.

Having heard learned counsel for the appellant and having perused the impugned award, this Court is clearly of opinion that the amount allowed by the Tribunal under the impugned award is not falling short of just compensation.

The Tribunal has examined and analysed the entire evidence produced by the claimants particularly in relation to the income of the deceased. The Tribunal has noticed that though the claimants asserted that the deceased was earning by way of working on his own agriculture land and so also on the land taken on contract; but no documentary evidence in relation to the land holding of the deceased was produced. Then, the assertion of their witness Jeewan Jyot Singh of having placed a part of his land on contract with the deceased and his father has also been rejected for want of supporting documentary evidence. The so-called accounts produced by the witness Jot Ram have also been rejected being not of regularly kept accounts books. The Tribunal has put a broad estimate on the joint income of father and son at Rs.4,000/- per month, and then has assessed the income of deceased at Rs.1,500/- per month. The estimate so put by the Tribunal cannot be said to be falling too short of a reasonable

estimate on the income of the deceased particularly when other assertions turn out to be hollow and not supported by cogent and reliable evidence.

Of course, application of multiplier of 8 appears to be lower side particularly in view of the age of the mother of the deceased at 53 years but then, significant it is to notice that for the purpose of multiplicand, the Tribunal has taken entire of the estimated income of the deceased at Rs.1,500/- per month. The amount of pecuniary loss thus assessed by the Tribunal in the sum of Rs.1,44,000/-, taking entire of the estimated income of the deceased for the purpose of loss of contribution to the parents of the deceased, definitely stands on higher side. The deceased being an unmarried person, looking to the future certainties and uncertainties, the chances of his getting married and larger part of his income getting diverted to his own family cannot be ruled out. In the circumstances of the case, not more than one-half of the estimated income of the deceased could have been taken towards pecuniary loss for the parents. The Tribunal having taken much higher amount towards multiplicand, i.e at Rs.18,000/- per annum, application of lower side multiplier of 8 has not ultimately worked to the detriment of the claimants; and the assessment of pecuniary loss cannot be said to be insufficient or too low. Then, the Tribunal has proceeded to allow Rs.25,000/- towards non-pecuniary loss and another

Rs.5,000/- towards other expenses. Such component is definitely on the higher side.

In the ultimate analysis, the award of compensation made by the Tribunal in the sum of Rs.1,74,000/- could only be said to be not less than that of just compensation. Moreover, the Tribunal has proceeded to award interest at the rate of 9% per annum from the date of filing of claim application. Such rate of interest in the award made in the month of July 2006 definitely stands on higher side. In fact, the award carries another error in favour of the claimants allowing them penal interest at 12% per annum for non-payment by the non-applicants within a month.

The award made by the Tribunal in favour of the claimants rules out any scope of enhancement.

As a result of the aforesaid, the appeal fails and is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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